

UNITED STATES DISTRICT COURT
NORTHERN DISTRICT OF NEW YORK

MICHAEL A. DEMUTH,

Plaintiff,

v.

9:18-CV-0807
(DNH/ATB)

C.O. COWLEY,

Defendant.

MICHAEL A. DEMUTH, Plaintiff pro se

ANDREW T. BAXTER
United States Magistrate Judge

DECISION AND ORDER

I. INTRODUCTION

Plaintiff Michael A. Demuth, a pretrial detainee confined in the Chenango County Correctional Facility ("Chenango County C.F."), commenced this action on or about July 9, 2018. Dkt. No. 1. On September 17, 2018, the Court issued a Decision and Order granting plaintiff's in forma pauperis application and dismissing the complaint pursuant to 28 U.S.C. §§ 1915(e)(2)(B)(ii), 1915A(b)(1), with leave to amend. Dkt. No. 13. Plaintiff availed himself of the opportunity to amend and filed an amended pleading with the Court on or about September 21, 2018. Dkt. No. 14 ("Am. Compl."). The amended pleading has eliminated all defendants except defendant Cowley. The amended complaint is now before the Court for review.

II. DISCUSSION

The amended complaint alleges that on July 3, 2018, at approximately 7:00 a.m., plaintiff was sitting at a table with other inmates when defendant Cowley, a Chenango

County C.F. correctional officer, served him breakfast. Am. Compl. at 2.¹ When defendant Cowley discovered that an extra piece of fruit from the meal cart was missing, he instructed plaintiff to stand up so that he could search for the extra food. *Id.* When defendant Cowley discovered that plaintiff did not have the food, he continued "conduct[ing] the morning meal service." *Id.* After all of the meals had been served, defendant Cowley returned to plaintiff to "harass . . . [and] torment[him] about the missing fruit." *Id.* Then defendant Cowley instructed plaintiff to "take off his orange sweat shirt, orange top shirt, and then lift his tee shirt" to prove that he had not stolen any food. *Id.* at 3. The search was conducted in front of dozens of inmates and prison staff. *Id.* at 3-4. Defendant Cowley's search was intended to harass and humiliate plaintiff in light of their "previous problems." *Id.* at 2.

Construed liberally, plaintiff's amended complaint asserts a Fourth Amendment unreasonable search claim against defendant Cowley. Mindful of the Court's obligation to liberally construe pro se litigants' pleadings, the Court concludes that the amended complaint alleges sufficient facts to require a response from defendant Cowley. This is not a ruling on the merits, and the Court expresses no opinion concerning whether the amended complaint could survive a properly filed dispositive motion.

WHEREFORE, it is hereby

ORDERED that plaintiff's amended complaint (Dkt. No. 14) is **ACCEPTED** for filing and is the operative pleading in this action; and it is

ORDERED, that the Clerk terminate defendants **CUTTING** and **TOWN OF NORWICH** in accordance with Judge' Hurd's September 17, 2018 Order (DKt. No. 13 at 8-10) and the

¹ The page numbers are those assigned by the Court's electronic filing system.

amended complaint, and it is

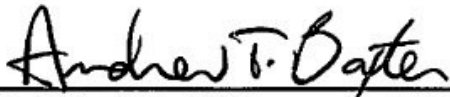
ORDERED that the Clerk shall issue a summons and forward it to the United States Marshal for service of process on defendant Cowley. The Clerk shall forward a copy of the summons and complaint by mail to the Chenango County Attorney, together with a copy of this Decision and Order; and it is

ORDERED that a response to the amended complaint shall be filed by defendant Cowley or his attorney in accordance with the Federal Rules of Civil Procedure; and it is

ORDERED that all pleadings, motions, and other documents relating to this action must bear the case number assigned to this action and be filed with the Clerk of the United States District Court, Northern District of New York, 7th Floor, Federal Building, 100 S. Clinton St., Syracuse, New York 13261-7367. Plaintiff must comply with requests by the Clerk's Office for any documents that are necessary to maintain this action. All parties must comply with Local Rule 7.1 of the Northern District of New York in filing motions; motions will be decided on submitted papers, without oral argument, unless otherwise ordered by this Court. **Plaintiff is also required to promptly notify the Clerk's Office and all parties or their counsel, in writing, of any change in his address; his failure to do so may result in the dismissal of this action;** and it is further

ORDERED that the Clerk shall serve a copy of this Decision and Order on plaintiff by regular mail.

Dated: October 25, 2018


Hon. Andrew T. Baxter
U.S. Magistrate Judge